

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *eg* D.C.  
05 MAY 24 PM 4:33

ROBERT B. DI THOLIO  
CLERK, U.S. DIST. CT.  
W.D. OF TN, MEMPHIS

JERRY L. BILLINGSLEY,

Plaintiff,

vs.

SHELBY COUNTY,  
OFFICER JOHN FORD, and  
OFFICER JON KIRKLAND,

Defendants.

No. 02-2920BV

ORDER GRANTING IN PART AND DENYING IN PART  
PLAINTIFF'S REQUEST FOR SUBPOENAS FILED APRIL 29, 2005

On April 29, 2005, the plaintiff, Jerry L. Billingsley, proceeding pro se, filed a request seeking to have the court issue subpoenas for thirty-two witnesses to appear at trial, which is scheduled for Monday, June 6, 2005, and give testimony. The request was referred to the United States Magistrate Judge for determination. A hearing was held in open court on Friday, May 20, 2005. Present at the hearing were Jerry Billingsley; Deadrick Brittenum, attorney for Officer Ford and Shelby County; and Deborah Godwin and Elizabeth McKinney, attorneys for Officer Kirkland. For the reasons that follow, the request is granted in part and denied in part.

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I. Shelby County Witnesses

Billingsley seeks subpoenas for thirteen witnesses employed by or associated with Shelby County. It is not necessary to issue a subpoena for Deputy Jailer Jon Ford because he is a defendant and will be present, and therefore Billingsley's request for a subpoena is denied as to Ford. Counsel for Shelby County objects to the issuance of subpoenas for Steve Shular, assistant to the Sheriff, and for Shelby County Sheriff Mark Luttrell on the grounds that neither of these persons has any first-hand knowledge of information relating to the remaining claims in this lawsuit, and any testimony that they would provide would be hearsay. Billingsley insists that both these witnesses can provide relevant testimony on the failure of the County to properly investigate his complaints. It does not appear that the failure of the County to investigate is still a viable claim. Accordingly, the testimony of Shular and Luttrell would not be relevant, and Billingsley's request for subpoenas for Shular and Luttrell is denied.

Billingsley also seeks to subpoena attorney Robert Hutton and Special Master Charles Fisher. Attorney Hutton represents plaintiff Darius Little in another lawsuit, *Darius Little v. Dowd, et al*, No. 96-6520M1, concerning conditions at the Shelby County Jail at 201 Poplar where Billingsley was housed when he was allegedly assaulted. Fisher was appointed by the court as Special Master to

investigate the status of the jail and report to the court. Billingsley claims that Hutton and Fisher can give testimony about matters that the jail failed to correct pursuant to court order and which, if corrected, would have prevented this assault on him by another inmate. The court finds that Billingsley has failed to establish how the testimony of Hutton and Fisher would be relevant to his lawsuit and therefore denies his request for a subpoena for Hutton and Fisher.

As to the remainder of the witnesses associated with the claim against the county, Billingsley's request for subpoenas is granted. The Clerk of the Court is directed to issue the requested subpoenas for the following witnesses located at 201 Poplar, Suite 901, Memphis, Tennessee 38103 and deliver them to the United States Marshal for service of process:

1. Captain Kinney
2. Supervisor Bobby Davis
3. Sgt. Redden
4. Director of Medical department Mr. Cooper
5. Dr. Stapanick of jail Medical Department
6. Nurse Jones and Nurse Driver of jail medical
7. Deputy Jailer Marcus Twilla
8. Deputy K. Scott
9. Deputy Jailer Melvin Reynolds

II. City of Memphis Witnesses

Billingsley seeks subpoenas for eight witnesses employed by or associated with the City of Memphis. Counsel for Memphis Police Officer Jon Kirkland objects to the issuance of subpoenas for Lt. C. Luhrs, Sgt. J. McClain, L.M. Charnes, and Officer Maurice Burton on the grounds that the only testimony these witnesses would provide would relate to the plaintiff's allegations that the City failed to properly investigate his complaints which allegations have been dismissed. It appears that these witnesses do not have first hand knowledge of information relevant to the remaining Eighth Amendment claim against Officer Kirkland. Therefore, Billingsley's request for subpoenas for these witnesses is denied.

Counsel for Officer Kirkland also objects to the issuance of subpoenas for Officer Johnny Harper and Officer William Singleton on the grounds that they have no first-hand knowledge of information relevant to the claims and defenses in this lawsuit. Billingsley explains that these two persons are friends of his who also are police officers and will testify as to the proper handling of a gun and the department's policy on training a weapon on someone. Officer Kirkland's objections are overruled, and the subpoenas will issue.

The Clerk of the Court is directed to issue the requested subpoenas for the following witnesses located at 201 Poplar, 12th

Floor, Memphis, Tennessee 38103 and deliver them to the United States Marshal for service of process:

1. Captain Newt Morgan
2. Major Raymond Hopkins
3. Officer Johnny Harper
4. William Singleton

III. Personal Witnesses

Finally, Billingsley seeks subpoenas for ten witnesses he categorizes as personal. There were no objections from the defendants as to these witnesses. Therefore, the Clerk of the Court is directed to issue the requested subpoenas for the following witnesses at the addresses indicated and deliver them to the United States Marshal for service of process:

1. Jerry Porter  
1096 Olean  
Memphis, TN 38104
2. Charge Nurse Ms. Owens  
Regional Medical Center  
877 Jefferson Ave.  
Memphis, TN 38103
3. Patient Assistance Ms. Bolden  
Regional Medical Center  
877 Jefferson Ave.  
Memphis, TN 38103
4. Dr. Dwight Dishmon  
Medplex  
880 Madison  
Memphis, TN 38103

5. Dr. William Dorko  
Medplex  
880 Madison  
Memphis, TN 38103
6. Antonia Herron  
3912 Enver St.  
Memphis TN 38127
7. Jermaine Hampton  
201 Poplar  
Memphis, TN 38103
8. Jimmy Lawrence (aka) James Lawrence  
Booking No. 01139572  
2232 Pamela  
Memphis, TN 38128
9. Gregory Westbrook  
Booking No. 01136273  
1241 Park Rd.  
Memphis, TN 38119
10. Andrew Townsend  
Booking No. 01140813  
1201 Mary Jane  
Memphis, TN 38126

Billingsley also requests that writs of habeas corpus ad testificandum issue for the following three of the witnesses who are presently incarcerated at the Shelby County Correctional Facility:

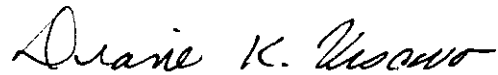
1. Jerry Porter
2. Jimmy Lawrence a/k/a James Lawrence
3. Jermaine Hampton

Billingsley's request is granted, and these writs will be issued.

CONCLUSION

Billingsley's request for subpoenas is granted in part and denied in part. The clerk of the court shall issue the subpoenas as directed herein after a final pre-trial order is entered and only upon confirmation by Judge Breen's case manager of the trial going forward on the date scheduled.

IT IS SO ORDERED this 23rd day of May, 2005.



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DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 185 in case 2:02-CV-02920 was distributed by fax, mail, or direct printing on May 25, 2005 to the parties listed.

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Honorable J. Breen  
US DISTRICT COURT